

original

LEIBOWITZ & ASSOCIATES, P.A.

MATTHEW L. LEIBOWITZ
JOSEPH A. BELISLE
ILA L. FELD
KARSTEN AMLIE

OF COUNSEL
AARON P. SHAINIS
LEE PELTZMAN

* NOT ADMITTED TO
FLORIDA BAR

SUITE 1450
SUNBANK INTERNATIONAL CENTER
ONE SOUTHEAST THIRD AVENUE
MIAMI, FLORIDA 33131-1718
TELEPHONE (305) 530-1322
TELECOPIER (305) 530-9417

SUITE 200
2000 L STREET, N.W.
WASHINGTON, D.C. 20038

RECEIVED

JUL 27 1995

July 7, 1995

Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OF THE FEDERAL GOVERNMENT

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

RE: Comments in PP Docket No. 93-253

Ladies and Gentlemen:

Enclosed please find an original and four copies of Comments being filed by MasTec, Inc. in response to the Commission's Further Notice of Proposed Rulemaking in the above referenced docket.

If you should have any questions concerning this filing, please contact me.

Sincerely yours,



Karsten Amlie
Counsel for MasTec, Inc.

Enclosures

cc: The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan Ness
Ruth Milkman
Rudolfo M. Baca
Lisa B. Smith
Jane Mago
Jill Luckett
Mary P. McManus
Andrew Sinwell

William E. Kennard
Jackie Chorney
Kathleen O'Brian Har
Rosalind Allen
Anthony Williams
Catherine Sandoval
Regina Keeney
Donald H. Gips
Robert H. Pepper
Gerald P. Vaughn
Jonathan Cohen

No. of Copies rec'd
List ABCDE

024

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of)	DOCKET FILE COPY ORIGINAL
)	
Implementation of Section 309(j))	
of the Communications Act-)	PP Docket No. 93-253
Competitive Bidding)	
)	
Amendment of the Commission's)	GN Docket No. 90-314
Cellular PCS Cross-Ownership Rule)	
)	
Implementation of Section 3(n) and 332)	GN Docket No. 93-252
of the Communications Act)	
Regulatory Treatment of Mobile Services)	

COMMENTS

1. The Commission in its Further Notice of Proposed Rule Making, in the above referenced dockets, sought comments with respect to proposed measures the Commission sought to adopt to address the legal uncertainties raised by the Adarand Constructors, Inc. v. Pena decision.¹ MasTec, Inc. through its undersigned counsel submits the following comments.²

2. MasTec, Inc. (MasTec) an Hispanic controlled company, has been actively engaged in the Commission's various rule makings and deliberations in PCS, a timely and costly undertaking, and intended to proceed to participate in the C Block auctions. However, in light of the proposed rules, MasTec would be barred from participation.

3. MasTec, a corporation which has approximately 65% Hispanic ownership and which is controlled by Hispanic management has its origin in two pre-existing wholly owned and controlled

¹ 63 U.S.L.W. 4523 (U.S. June 12, 1995).

² MasTec will not address the wisdom or the merits of the Adarand decision.

small Hispanic companies. Specifically, Church and Tower, Inc. and Church and Tower of Florida, Inc. had combined gross revenues of less than \$40 million prior to 1994.³ In 1994, the two Church and Tower companies entered into a "reverse acquisition" with Burnup & Sims.⁴ In this transaction, Burnup & Sims issued common stock to the shareholders of the two Church & Tower companies in exchange for all of the outstanding stock of the two Church and Tower companies. Burnup & Sims, therefore, owned the two Church and Tower companies after the exchange of stock. However, the former shareholders of the two Church and Tower companies received approximately 65% of the outstanding shares of Burnup & Sims. Thus, these Hispanic shareholders now control Burnup & Sims and its Board of Directors. Burnup & Sims has been renamed MasTec, Inc. As reflected above, MasTec, Inc. therefore is the evolved Church and Tower Companies as a result of their natural growth and development. See Chart Attached hereto as Exhibit I. In 1994, MasTec had gross revenues of approximately \$142 million as the result of its growth.

4. Both Church and Tower companies are Small Business and yet due to the present rule for determining eligibility for participation in the Entrepreneur's Block auctions, they may be precluded from participation in the auctions. The present rules act as a bar to those entities affiliated with successful small businesses which have, during the prolonged pendency of this proceeding, experienced an appreciation in their gross revenues. The Commission, in the Fifth Memorandum Opinion and Order, FCC 94-285 ¶27 adopted (November 10, 1994), recognized that during the license holding period affiliates will grow financially and may even be subject to takeovers. However,


³ The companies also had assets less than \$500 million.

⁴ Prior to 1994, Burnup & Sims had gross revenues in excess of \$125 million but less than \$500 million in assets.

in that proceeding, the Commission stated that "normal projected growth of gross revenues and assets, or growth such as would occur as a result of a control group members' attributable investments appreciating, or as a result of a licensee acquiring additional licenses would not generally jeopardize continued eligibility as an entrepreneur's block licensee." Id. at ¶ 27. Yet, the Commission's present rules currently do not appreciate that during the time the Entrepreneur Block auctions were first initiated, affiliates have grown financially and appreciated in value. As a result, prospective applicants, such as either of the two Church and Tower companies, which control affiliates that have experienced a great degree of success and growth may now unfairly be precluded from applying for PCS licenses.

5. Accordingly, MasTec, Inc. would respectfully request that the Commission, in its revised rules recognize small pre-existing businesses, and their affiliates, that have grown and developed since January, 1994, through processes such as a reverse acquisition and determine that such small businesses remain qualified for Block C. In this manner, the Commission will be assured of participation by qualified Hispanic participation in the Block C auction.

Respectfully submitted,



Matthew L. Leibowitz
Karsten Amlie
Counsel for MasTec, Inc.

July 7, 1995
Leibowitz & Associates, P.A.
One S.E. Third Avenue, Suite 1450
Miami, FL 33131

DEMONSTRATIVE CHART